

INITIATIVE 255

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal, hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 255 to the Legislature is a true and correct copy as it was received by this office.

1 AN ACT Relating to the safety and well-being of children; adding
2 new sections to chapter 9.68 RCW; repealing RCW 9.68.015, 9.68.050,
3 9.68.060, 9.68.070, 9.68.080, 9.68.090, 9.68.100, 9.68.110, 9.68.120,
4 9.68.130, 9.68A.140, 9.68A.150, and 9.68A.160; and prescribing
5 penalties.

6 BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The people find that sexually explicit
8 materials are harmful to the safety and well-being of children. Such
9 graphic materials contribute to increased sexual activity by children
10 along with higher rates of sexually transmitted diseases, illegitimate
11 pregnancies, and acts of sexual aggression by children against other
12 children. The people intend by this act to promote the safety and
13 well-being of children by limiting the ability of children to access
14 sexually explicit materials and to ensure the law reinforces and
15 supports the wishes of parents regarding their children's access to
16 such graphic materials.

1 NEW SECTION. **Sec. 2.** As used in sections 1 through 6 of this act,
2 the following terms have the meanings indicated unless the context
3 clearly requires otherwise.

4 (1) "Harmful to minors" means any matter or live performance:

5 (a) That the average adult person, applying contemporary community
6 standards, would find, when considered as a whole, appeals to the
7 prurient interest of minors; and

8 (b) That explicitly depicts or describes, by prevailing standards
9 in the adult community with respect to what is suitable for minors,
10 patently offensive representations or descriptions of:

11 (i) Ultimate sexual acts, normal or perverted, actual or simulated;
12 or

13 (ii) Masturbation, fellatio, cunnilingus, bestiality, excretory
14 functions, lewd exhibition of the genitals or genital area, sexually
15 explicit conduct, sexual excitement, or sexually explicit nudity; or

16 (iii) Sexual acts that are violent or destructive, including but
17 not limited to human or animal mutilation, dismemberment, rape, or
18 torture; and

19 (c) That, when considered as a whole, and in the context in which
20 it is used, lacks serious literary, artistic, political, or scientific
21 value for minors.

22 (2) "Matter" means a motion picture film, a publication, a sexual
23 device, or any combination thereof.

24 (3) "Motion picture film" means any:

25 (a) Film or plate negative;

26 (b) Film or plate positive;

27 (c) Film designed to be projected on a screen for exhibition;

28 (d) Film, glass slides, or transparencies, either in negative or
29 positive form, designed for exhibition by projection on a screen;

30 (e) Videotape; or

31 (f) Any other medium used to transmit or reproduce images on a
32 screen.

33 (4) "Publication" means any book, magazine, article, pamphlet,
34 writing, printing illustration, picture, sound recording, telephonic
35 communication, or coin-operated machine.

36 (5) "Live performance" means any play, show, skit, dance, or other
37 exhibition performed or presented to or before an audience of one or
38 more, in person, or by cable television transmission or telephonic
39 communication, with or without consideration.

(6) "Knowledge" means knowledge as defined in RCW 9A.08.010(1)(b).

(7) "Knowledge of its character" means that the person has knowledge that the matter or performance contains, depicts, or describes activity or conduct that may be found to be patently offensive under subsection (1)(b) of this section. Such knowledge may be proved by direct or circumstantial evidence, or both.

(8) "Minor" means any person under the age of eighteen years.

(9) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(10) "Sexual device" means any artificial device primarily designed, promoted, or marketed to physically stimulate or manipulate the human genitals.

(11) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal; or the depiction of covered male genitals in a discernibly turgid state.

(12) "Sexually explicit conduct" means physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, perineum, or, if such person is a female, breast.

(13) "Sexually explicit nudity" means the showing of the human male or female genitals, pubic area, buttocks, or perineum with less than a full opaque covering; or the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple.

NEW SECTION. **Sec. 3.** No person may with knowledge of its character:

(1) Display matter that is harmful to minors in such a way that minors, as part of the invited general public, may access, be exposed to, or be allowed to view the matter; however, a person is deemed not to have displayed matter harmful to minors if:

(a) The matter is kept behind devices commonly known as blinder racks in such a way that the lower two-thirds of the matter is not accessible or exposed to view; or

(b) In the case of an operator who transmits matter that is harmful to minors via cable television transmissions, the operator first notifies the subscriber of the availability of a device that allows a subscriber to prohibit access or exposure to a particular cable transmission; or

1 (c) In the case of a person who provides or allows a minor access
2 to a computer containing matter that is harmful to minors stored
3 locally, or that can be connected to the internet, the computer is
4 equipped with specialized filtering software actively installed for the
5 purpose of protecting minors from accessing, being exposed to, or being
6 allowed to view matter that is harmful to minors;

7 (2) Sell, furnish, present, distribute, allow access, permit to
8 view or hear, or otherwise expose, disseminate, or provide to a minor,
9 with or without consideration, any matter that is harmful to minors; or

10 (3) Present to a minor or participate in presenting to a minor,
11 with or without consideration, any live performance that is harmful to
12 minors.

13 NEW SECTION. **Sec. 4.** In any prosecution for violation of section
14 3 of this act, it is an affirmative defense that:

15 (1) The matter or performance involved was displayed or otherwise
16 disseminated to a minor by the minor's parent or legal guardian, for
17 bona fide purposes; or

18 (2) The matter or performance involved was displayed or otherwise
19 disseminated to a minor with the written permission of the minor's
20 parent or legal guardian, for bona fide purposes; or

21 (3) The person made a reasonable good faith attempt to ascertain
22 the true age of the minor by requiring production of a driver's
23 license, state identicard, marriage license, birth certificate, or
24 other governmental or educational identification card or paper, or copy
25 thereof if supplied by mail or electronic facsimile when in-person
26 production thereof is impractical, and not relying solely on the oral
27 allegations or apparent age of the minor.

28 NEW SECTION. **Sec. 5.** (1) A person who is convicted of violating
29 section 3 of this act is guilty of a gross misdemeanor.

30 (2) Each day that a violation of section 3 of this act occurs or
31 continues is a separate offense and is punishable as a separate
32 violation.

33 (3) Every act, thing, or transaction prohibited by section 3 of
34 this act is a separate offense as to each item, issue, or title
35 involved and is punishable as such.

(4) For the purpose of this section, multiple copies of the same identical title, monthly issue, volume, and number issue, or other such identical material are a single offense.

NEW SECTION. **Sec. 6.** (1) The state of Washington fully occupies and preempts within the boundaries of the state the entire field of regulation and sanctions for displaying, selling, furnishing, presenting, or otherwise distributing matter or performances that are harmful to minors.

(2) Counties, cities, towns, or other municipalities may enact only those laws and ordinances relating to matter and performances harmful to minors that are consistent with this chapter.

(3) Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of this chapter may not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of such county, city, town, or municipality.

NEW SECTION. **Sec. 7.** The following acts or parts of acts are each repealed:

(1) RCW 9.68.015 (Obscene literature, shows, etc.--Exemptions) and 1959 c 260 s 2;

(2) RCW 9.68.050 ("Erotic material"--Definitions) and 1992 c 5 s 1 & 1969 ex.s. c 256 s 13;

(3) RCW 9.68.060 ("Erotic material"--Determination by court--Labeling--Penalties) and 1992 c 5 s 2 & 1969 ex.s. c 256 s 14;

(4) RCW 9.68.070 (Prosecution for violation of RCW 9.68.060--Defense) and 1992 c 5 s 4 & 1969 ex.s. c 256 s 15;

(5) RCW 9.68.080 (Unlawful acts) and 1969 ex.s. c 256 s 16;

(6) RCW 9.68.090 (Civil liability of wholesaler or wholesaler-distributor) and 1992 c 5 s 3 & 1969 ex.s. c 256 s 17;

(7) RCW 9.68.100 (Exceptions to RCW 9.68.050 through 9.68.120) and 1969 ex.s. c 256 s 18;

(8) RCW 9.68.110 (Motion picture operator or projectionist exempt, when) and 1969 ex.s. c 256 s 19;

(9) RCW 9.68.120 (Provisions of RCW 9.68.050 through 9.68.120 exclusive) and 1969 ex.s. c 256 s 20;

(10) RCW 9.68.130 ("Sexually explicit material"--Defined--Unlawful display) and 1975 1st ex.s. c 156 s 1;

1 (11) RCW 9.68A.140 (Definitions) and 1987 c 396 s 1;
2 (12) RCW 9.68A.150 (Allowing minor on premises of live erotic
3 performance) and 1987 c 396 s 2; and
4 (13) RCW 9.68A.160 (Penalty) and 1987 c 396 s 3.

5 NEW SECTION. **Sec. 8.** Sections 1 through 6 of this act are each
6 added to chapter 9.68 RCW.

7 NEW SECTION. **Sec. 9.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

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